

November 23, 2009

Administrator Lisa Jackson  
USEPA Ariel Rios Building  
1200 Pennsylvania Avenue NW  
Washington, DC 20004

2009 DEC -7 AM 8:10

Re: EPA ID# INN000508071

**U.S. EPA REGION 5**  
**PORTER COUNTY -TOWN OF PINES**

Dear Administrator Jackson:

We, the P.I.N.E.S. Community Group, are requesting your intervention and assistance. We are the designated community group of a Technical Assistance Program (TAP) Grant for the EPA Region 5 Pines Alternative Superfund site in the Town of Pines, Indiana. This TAP Grant (a different beast than Superfund TAG Grants) is the first such grant ever made and there are problems with its implementation. While implementation problems for a new mechanism for public involvement are understandable, the bottom line for us is that we are at present being denied funds to pay our technical adviser for a substantial portion of work that it has performed under the grant on our behalf and the behalf of the community, work done in close coordination with Region 5 staff. Our attempts to resolve this with Region 5 to date have proven unsuccessful.

The initial funding for the TAP proved insufficient for P.I.N.E.S. to complete its contracted obligations under the grant. The original mechanisms for supplementing the grant funding proved inadequate and were renegotiated between EPA and the Potentially Responsible Parties (PRPs). Although P.I.N.E.S. was not party to those negotiations, both P.I.N.E.S. and its technical advisor for TAP work were informed that the problems with funding levels were recognized and were being addressed. The negotiated Amendment to the TAP Agreement presented to P.I.N.E.S. for acceptance did not change the term of the still-in-effect TAP Agreement. The Amendment did not introduce the concept or potential for supplemental funding; those were in the original TAP Agreement. It did not limit the amount of supplemental funding or provide dates of effectiveness separate from that of the original Agreement. It only provided more flexibility for P.I.N.E.S. to obtain supplemental grant funds than the original Agreement.

New funding has been awarded P.I.N.E.S. under the amended TAP agreement. There were several months between when original funding was exhausted and the new grant funds were available. Negotiations were ongoing during this period. Work on the RI/FS was also ongoing during this period, including critical analysis of and comment upon the RI report in general and the ground water model in particular. Our technical advisor continued to work in good faith on our behalf under the TAP Agreement, with full knowledge of and in cooperation with the Region 5 staff, allowing P.I.N.E.S. to fulfill its obligations under the Agreement. Now however, the position of Region 5 is that the supplemented TAP funding cannot be used by P.I.N.E.S. to pay our technical advisors for work they did for the ongoing RI/FS during the interim negotiation period between the exhaustion of the original funding and the implementation of funding under the Amendment to the TAP Agreement. P.I.N.E.S. adamantly believes this position is within neither the spirit nor the letter of the TAP Agreement as amended, and seeks your assistance reversing it.

As the designated Community Group, we received an initial \$50,000 TAP Grant from the PRPs in 2005, an amount negotiated between Region 5 and the PRPs (exclusive of P.I.N.E.S. involvement). Region 5 has subsequently acknowledged that, at least in hindsight, this was insufficient funding for P.I.N.E.S. to meet its obligations under the TAP Agreement. P.I.N.E.S. was able to stretch this funding, but by July of 2008, this initial TAP grant funding was exhausted. Whether simply by inefficient performance of the RI/FS or a concerted effort on the part of the PRPs, the effect was the same. Absent additional funding, the oft-delayed RI/FS process exhausted P.I.N.E.S.'s funding and would thus drive our technical advisor from the review process and preclude P.I.N.E.S. from fulfilling its charge under the TAP agreement. Region 5 seemingly understood this and initiated renegotiations of the TAP Agreement with the PRPs.

The RI/FS program was not, of course, put on hiatus during these negotiations; it continued unabated. P.I.N.E.S. and its technical advisor could continue to work under the TAP agreement with nothing more than the assurances from Region 5 that a mechanism for additional funding was being developed, or P.I.N.E.S. could abrogate its responsibility to the community under the TAP Agreement and drop out permanently or during an undefined interim period, until additional funding was secured.

Our technical advisor for the TAP grant of the Alternative Superfund process, Geo-Hydro, Inc. (GHI), performed invaluable consulting work during the Remedial Investigation phase - for our group, for the Pines community and for Region 5 EPA. Numerous Remedial Investigation documents and drafts produced on behalf of the Potentially Responsible Parties by their environmental consulting group, ENSR (recently acquired by AECOM) required often-repetitious analysis by GHI. The EPA-required ground water model generated by AECOM was deemed so completely flawed, the EPA rejected it (as of 11/3/09), nearly 18-months after its initial submission and after submission of two inadequate revisions. Without the ongoing participation, analysis, and input of our technical advisor, we are certain that Region 5 EPA would have accepted a flawed Remedial Investigation Report (including the rejected ground water model). That would have led to a flawed Human Health and Ecological Risk Assessment (RA). A flawed RA would result in an inappropriate assessment of any remedial activities of the site and no reliable assertion in the end of adequate environmental and human health protection - the very purposes of the Superfund process.

GHI was initially contracted to advise the Pines Community Group to a contracted amount of \$45,000 (P.I.N.E.S. retained \$5,000 of the original grant to fulfill its obligations to the community). When we exhausted initial funding, the Remedial Investigation was far from complete, and P.I.N.E.S. understood negotiations for additional funding were underway. In good faith, GHI continued to review ENSR's work product, in coordination with Region 5, and submitted comments to the Region 5 on our behalf. Had they not, the health of the residents in the Superfund area would have been at risk.

In February of this year the PRPs signed and presented to P.I.N.E.S. an Amendment to the original TAP Agreement that had been negotiated by Region 5 and the PRPs. The Amendment indicated that unspecified supplemental TAP funding would be made available to P.I.N.E.S. from the PRPs at the direction of Region 5 EPA. Subsequent to the presentation of the Amendment for P.I.N.E.S.' signature, we sought clarification of the Amendment with respect to what we felt were ambiguities of amounts, timing, and eligible activities. It was also at this time that PRPs' consultants approached GHI to seek an independent agreement between the consulting firms seeking to limit GHI's use of RI data contrary to GHI's consulting agreement with P.I.N.E.S. and our TAP Agreement. This was not a time that engendered confidence and trust in other parties to the RI/FS process. P.I.N.E.S. pursued its understanding of and comfort with the Amendment presented with all deliberate speed and, as soon as it comfortably could, signed the Amendment.

It must be noted that, during the Amendment negotiation and discussion process, at no time did EPA Region 5 Pines Alternative Site Project Manager, Tim Drexler, indicate to the P.I.N.E.S. that new funding could only be utilized for activities to be encountered during the next phase of the Superfund process, the Risk Assessment Phase, Region 5's current position. Within weeks following the consummation of the TAP Agreement Amendment supplementing funding, GHI submitted an itemized invoice for work completed on behalf of the P.I.N.E.S. on the RI during the funding hiatus. P.I.N.E.S. presumed the signed Amendment replenished our technical advisory funds and thus would permit the PINES Group to compensate Geo-Hydro for critical work performed - on behalf of PINES Group, the community of Pines and Region 5 EPA.

After a four month wait (not until our meeting with Mr. Drexler on September 25, 2009 to be exact), we learned the amount of the new funding (\$50,000) and, we learned that these new funds were solely intended for forthcoming expenditures - principally for advisory input from a yet to be contracted Health Assessment consultant which we will need for the next phase of the Superfund process, the Risk Assessment. Mr. Drexler indicated that he sympathized with our situation, stated that if he had known how long the RI process would last, and in particular, how troublesome the mathematical model would become, he (Region 5 EPA) would have hired their own water model consultant so that the EPA would not have relied so heavily upon Geo-Hydro to "shoulder the burden" of the review process. We thanked Mr. Drexler for his sympathy but asked that he direct the PRPs to compensate our technical advisor for the acknowledged critical work they completed on the RI. Mr. Drexler indicated that this was

impossible but that we "might" be able to earmark any unused funds left after the Risk Assessment phase for compensating Geo-Hydro for work completed but not yet compensated.

Being both dissatisfied with the amount of additional funding and the constraints placed upon it, the P.I.N.E.S., on September 25, 2009 requested that Mr. Drexler return with higher ranking EPA officials to discuss our disagreement with Mr. Drexler's interpretation of new funding constraints and on October 22, 2009 the PINES Group met with Mr. Drexler, Mr. Don Bruce, Ms. Janet Pope of the EPA and Mr. Eric Morton, Senior Scientist with Tetra Tech, the Risk Assessment phase consultant to the EPA for the Pines Alternative Superfund Site. We were once again informed that the total amount of new TAP funding was \$50,000 and that it could not be used to compensate Geo-Hydro for work performed during the hiatus in available funds.

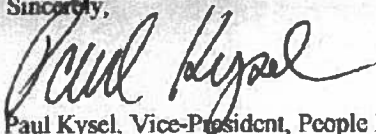
At this meeting, the P.I.N.E.S. pointed out to the EPA officials present that according to its read of the original signed TAP Agreement and the ensuing re-funding Amendment signed in May of this year, the PINES Group could not find any language outlining or inferring such constraints, that the work performed by Geo-Hydro on behalf of the P.I.N.E.S. Group, the Town of Pines, and the EPA was necessary, invaluable and worthy of compensation. We were yet again rebuffed. A member of the public in attendance at this meeting asked EPA officials present what the appeals process was for such a disagreement / impasse - we learned that there is none. They did challenge us to by all means contact you. - And, thus, our outreach to you, with copies and outreach to our Congressional Representatives, Senators Dick Lugar and Evan Bayh, and Congressman Joe Donnelly.

We ask for your immediate intervention and your direction to the Remedial Project Manager to demand that the PRP's compensate our technical advisor for services rendered and to cover whatever costs will invariably be incurred as they continue their work on our behalf. Mr. Drexler has written to AECOM (EPA letter dated 11/3/09) informing them that Region 5 EPA has conditionally approved the nearly year-old Remedial Investigation Report submitted by ENSR / AECOM on 12/5/2008 - with 14 pages of required changes, edits, deletions, redactions, etc. There is clearly a significant amount of work that has yet to be accomplished, and additional funding is required.

With the track record of work submitted to date by ENSR / AECOM, our technical advisor is still needed to analyze this "final" corrected draft to ensure that ENSR / AECOM has either (for the first time) submitted a document with all EPA directed changes, corrections, etc., or persists in ignoring such direction. Without a final review by our technical advisor, we cannot fulfill our role in this process and ensure the affected public understands what their EPA has done and not done, and understands the significance to them of those actions. The affected residents and environment are entitled to the full protection of all State and Federal agencies as they relate to this issue. This issue must be handled with the utmost care and concern for the people of Pines Indiana, a mere funding dispute should be no reason to prevent not only the P.I.N.E.S. group but the Federal Government from identifying a safe and long term solution to a three decades long problem.

I look forward to hearing from you, and would be happy to answer any and all questions that you may have regarding this matter.

Sincerely,



Paul Kysel, Vice-President, People In Need of Environmental Safety (P.I.N.E.S.)

Exemption 6

PINES Group  
C/O Paul Kysel

Exempt...

Administrator Lisa Jackson  
USEPA Ariel Rios Building  
1200 Pennsylvania Avenue NW  
Washington, DC 20004



**Fw: PINES Group - an update**  
Mary Canavan to: Timothy Drexler

12/08/2009 10:17 AM

FYI

— Forwarded by Mary Canavan/R5/USEPA/US on 12/08/2009 10:18 AM —

From: "Rozmanich, David (BAYH)" <David\_Rozmanich@bayh.senate.gov>  
To: Mary Canavan/R5/USEPA/US@EPA  
Date: 12/08/2009 10:16 AM  
Subject: Fw: PINES Group - an update

**From:** Paul Kysel <Exemption 6>  
**To:** Rozmanich, David (BAYH)  
**Cc:** Jan Nona <Exemption 6>; Larry Silvestri <Exemption 6>  
**Sent:** Mon Dec 07 19:47:21 2009  
**Subject:** PINES Group - an update

Since I last communicated to you we have had a couple of significant developments. The Potentially Responsible Party's environmental consultant, Aecom, has begun a process of refutation of the 14 pages of directed changes that the EPA requested be part of the final Remedial Investigation Report that was initially due on 12/3/09 (Aecom has now been granted a later due date of 1/8/2010). Our consultants, Geo-Hydro, have been dropped from the EPA's e-mail routing - we assume in an attempt to create a documentation trail that the EPA is no longer communicating directly with our consultants due to the exhaustion of the initial TAP Grant funds. Although this is a new move, the EPA has been in close e-mail, phone and other communications with Geo-Hydro following the 7/08 exhaustion of these funds - it is only now that we've turned up the heat trying to get Geo-Hydro compensated for their work that EPA has taken this step. No matter, I am acting as an info conduit to and from EPA and our technical advisor. They have continued to prove invaluable in our attempts to challenge Aecom's refutation of the 14-pages of directed changes.

What we just learned since this final push back started is that because the Pines Yard 520 is not a listed Superfund Site, but instead an Alternative Superfund Site, the Potentially Responsible Parties can direct their consultant to tell EPA that it refuses to make any or all of the EPA directed changes. If they chose to do that the EPA has but one alternative in its ability to move this forward, the EPA can draft its own Remedial Investigation Report - we understand that this is very unlikely based upon EPA history.

This has led us to wonder the following:

1. Why did the EPA chose to offer the Potentially Responsible Parties the option of going the Alternative Superfund route instead of the traditional Superfund process? It should be noted that the PINES Group was not at the negotiating table when this decision was made. We inherited this decision and have done the best we could with what we inherited.

2. Is there something to be gained by asking the EPA to re-characterize this site as a listed Superfund Site? At this point in time we, as the community group acting on behalf of the affected community, would strongly say "yes" to such a proposition. Had this been a traditional, listed Superfund site, it would have been the EPA who would have done the work developing the Remedial Investigation Report - our role would have been to simply act as the liaison between the community and EPA - our technical advisors role would have been to

interpret EPA actions for the affected community. Instead our role has been to analyze all work product produced by the Potentially Responsible Parties and demand that the EPA does its due diligence.

If this site were re-classified as a listed Superfund Site, much of the troubles we've had to date would evaporate and a better outcome could almost certainly be assured. We do not know if this is feasible but it is certainly desirable. The control would then be in EPA's hands and not the Potentially Responsible Parties.

Last point, and I apologize for the length of this e-mail, Jan Nona and I attended the Town of Pines Town Council meeting on 12/2/09. We updated these folks and asked for their support in getting Geo-Hydro reimbursed for their work. We also advised them to contact the EPA and express a renewed desire to be officially recognized as a "stakeholder" in this Alternative Superfund Site. They have previously asked the EPA for that status and were previously rejected. I pressed the EPA about this at our 10/22/09 meeting with EPA and we were told that the Town of Pines could not be recognized as a stakeholder because they have a conflict of interest in regards to this site....when asked to explain this conflict of interest we were told that since the Town of Pines used fly ash on some of the town's roads in the '70's they have some potential responsibility for the current contamination. We pointed out that the Town was told by the Potentially Responsible Parties at that time that fly ash was a perfectly safe material and posed no risk to human health. We further stated that if the EPA was concerned about conflicts of interest how was it not a conflict of interest to have the very parties responsible for the contamination control the whole Superfund process by hiring the environmental consultant, Aecom, who is completing the Remedial Investigation and who will soon submit a Risk Assessment Report? I ask you, where is the bigger conflict of interest here?

We would truly appreciate any support that Senator Bayh may be able to provide on our behalf towards getting this site re-designated as a listed Superfund Site.

Please feel free to contact me with any questions you may have regarding any of these points or if you need any additional clarification.

Thanks again,

Paul Kysel - PINES Group Vice President

Exemption 6

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